

DIVISION XVI.

Interruption of the Positive Prescription.

1630. *March 29.* The KING and the E. MONTEITH *against* —.

No 455.
Interrup-
tion by the
Crown.

AFTER mature deliberation and reasoning amongst the LORDS, upon a letter exhibited by the Earl of Monteith to them from the King's Majesty diverse days of before ; it was at length found, That the publication and proclamation of that letter at the market-crosses of any sheriffdom, within the which any party having interest dwells, whose right may be quarrelled by the King, without intending of any action against any person, or any particular citation of any person, should serve to the King, being so published to the lieges generally before the 13 years expired, appointed by that act of prescription, to interrupt the prescription, which might run against the King's right, appointed by the act of prescription *anno 1617*, as effectually as if action had been intended and executed against particular persons, within the space foresaid, notwithstanding that by that act, intending of action within that space was appointed and required specially to be executed ; which the LORDS by their ordinance found was supplied by this publication of the King's letter and will, whereof the LORDS allowed, and interponed their authority thereto *nemine opponente*.

Fol. Dic. v. 2. p. 130. Durie, p. 515.

1630. *July 14.* His MAJESTY'S ADVOCATE *against* LAIRD OF PINCAITLAND.

No 456.

CONFORM to the statute (anent prescription) in an action pursued by his Majesty's Advocate, Sir Thomas Hope, and Treasurer, 14th July 1630, against the Laird of Pincaitland, for the duty of viccarage lands of Pincaitland, set in tack to the Laird of Pincaitland, unconfirmed *in anno 1558*, the Laird of Pincaitland *alleged* by Mr Roger Mowat, his procurator, That he and his predecessors had bruiked the said lands, conform to his right, more than 40 years without interruption ; and by virtue of the act anent prescription of heritable rights, James VI. Parl. 22d, cap. 12th, the King's Advocate could not be heard to quarrel his right, which was prescribed. To which it was *answered* by Sir Thomas Hope, That the King's Majesty, conform to the Lords' statute, had made lawful interruption by the publication of the said statute at the market-cross of Haddington, where the lands lie, and the cross of Edinburgh, where the defender dwells, before the outrunning of 13 years, granted by the estates in the said Parliament. To which it was *replied*, That the statute of the Lords could not derogate to the